IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
Writ Petition No.1956 of 1994
With
Writ Petition No.2639 of 1994

Writ Petition No.1956 of 1994

1. The Budhuwar Chowk Mazdoor Adda,
The Public Charitable Trust,
registered under the Bombay
Charitable Trust Act,
Through its President,
Shri Shreeram Vishnu Khandekar,
Age Adult, Occ.Worker,
residing at Budhwar Chowk,
Pune - 411 002.

2. Budhuwar Chowk Sarvajanik
Ganesh Mandal, A registered
Public Charitable Trust,
Through its President,
Shri Dilip Dondiba Adkar,
Age about 28 years,
Occ : Service, residing at
Budhwar Chowk, Pune 411 002.

3. Budhuwar Bhag Taxi Stand
Association,
Through its President
Shri Baban Anand Kunjir, Adult,
Occ : Service, residing at
Budhwar Peth, Pune 411 002. .. Petitioners

Vs.

1. Pune Municipal Corporation,
having its office at
Pune Municipal Corporation,
Shivaji Nagar, Pune.

2. The Commissioner,
Pune Municipal Corporation,
having its office at
Corporation Building,
Pune Municipal Corporation,

Pune.)

3. Shreemant Dhagaduseth Halvai)
Ganpati Trust,)
A Registered Charitable Trust,)
Through its President,)
Shri Prataprao Godse,)
Adult, Occ: Service,)
Residing at Ganpati Bhawan,)
250, Budhuwar Peth,)
Pune - 411 002.).. Respondents

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Shri A.V.Anturkar for the petitioners.

Shri R.G.Ketkar for the respondent Nos.1 and 2.

None for the respondent No.3.

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Writ Petition No.2639 of 1994

1. Indian Secular Society,)
through its Vice President,)
Satyaranjan Sathe, residing at)
A/5 Shri Rahul Co-op.Housing)
Society, 83/10, Erandawana,)
Pune 4.)

2. People Union for Civil Liberties)
through its Office Bearer,)
Mr.R.P.Nene, residing at 90,)
Satyaranjan Sathe, A/5,)
Shri Rahul Co-op.Housing Society)
83/10, Erandawana, Pune -4.).. Petitioners

Vs.

1. State of Maharashtra,)

2. Pune Municipal Corporation,)
having its office at)
Pune Municipal Corporation,)
Shivaji Nagar, Pune.)

3. The Commissioner,)
Pune Municipal Corporation,)
having its office at)

Corporation Building,)
Pune Municipal Corporation,)
Pune.)

4. Shreemant Dhagaduseth Halvai)
Ganpati Trust,)
A Registered Charitable Trust,)
Through its President,)
Shri Prataprao Godse,)
Adult, Occ: Service,)
Residing at Ganpati Bhawan,)
250, Budhuwar Peth,)
Pune - 411 002.).. Respondents

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Shri Madhav Jamdar for the petitioners.

Shri R.M.Patne, AGP for the respondent No.1.

Shri R.G.Ketkar for the respondent Nos.2 and 3.

None for the respondent No.4.

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CORAM : R.M.S.KHANDEPARKAR &
SMT.R.S.DALVI, JJ.

DATED : 17TH MARCH, 2006

ORAL JUDGMENT: (Per R.M.S.Khandeparkar, J)

1. Heard. In the course of hearing of the matters, the respondent Nos.1 and 2 have filed the affidavits wherein it has been stated thus:-

> "I say that on 15th January, 2005, the 4th Respondent made an application to the Municipal Commissioner setting out therein

that during the pendency of the above writ petition, the P.M.C. had leased C.T.S.No.166 and 167 to it for construction of Ganesh Temple on which the Ganesh Temple is constructed. In view of this, the 4th Respondent is ready to hand over C.T.S. No.165 which is reserved for parking in the Development Plan. The 4th Respondent also consented for rescinding the General Body Resolution No.654 dated 25th February, 1994. The request was made to refund the amount of Rs.83,000/- deposited by it. I crave liberty to this Hon'ble Court referred to and rely upon the said letter as and when produced.

I say that the matter was considered by the Standing Committee and under Resolution No.1265 dated 18th January, 2005, the Standing Committee recommended the General Body to rescind G.B.No.654 dated 25th February, 1994 among other things. Annexed hereto and marked as **Exhibit "2"** is the copy of the said Resolution. I say that the entire matter was ultimately considered by the General Body and under Resolution No.428 dated 24th March, 2005 the General Body accorded sanction for (1)

rescinding the General Body Resolution No.654 passed on 25th February, 1994, (2) for cancelling the Agreement dated 4th February, 1994 entered between the P.M.C. and the 4th Respondent and also cancellation of the possession receipt, (3) for refund of amount of Rs.83,000/- out of total amount of Rs.8,29,000/- towards premium by taking possession of 400 sq. mtrs. from the 4th Respondent and (4) developing the property as per the Government's Order dated 4th August, 1938 as also for parking as per the provision made in the Development Plan sanctioned on 5th January, 1987. Annexed hereto and marked as **Exhibit "3"** is the copy of the said Resolution dated 24th March, 2005.

In the light of this, I say that the P.M.C. has cancelled the earlier Resolution dated 25th February, 1994 whereby 400 sq.mtrs. out of C.T.S.No.165, Budhwar Peth was leased out to the 4th Respondent for 99 years. I say that this action of this P.M.C. was impugned in the above Writ Petition. Since the P.M.C. is now developing the property as per the Government's Order dated 4th August, 1938 as

> also in conformity with the proposal made in the development sanctioned on 5th February, 1987, the grievance made by the Petitioners in the petition no longer survives and the Petition may be disposed of as being rendered infructuous on account of subsequent developments."

2. The above statements by the respondents clearly disclose that the decision to allow the plot in question for the purpose of construction of temple instead of utilising the same for the purpose for which it was reserved, has already been withdrawn and even the amount which was accepted as an advance from the 4th Respondent has been decided to be refunded to the 4th Respondent. We accept the above quoted statements on behalf of the respondent Nos.1 and 2, and in fact, the same serve the purpose of the petitioners. In view of the decision on the part of the respondent Nos.1 and 2 to cancel the allotment in respect of the suit land in favour of the 4th respondent for the purpose of construction of a temple, nothing survives in the matters, and while accepting the said statements, the petitions are accordingly disposed of. Rule in both the petitions stands discharged with no order as to costs.

(R.M.S.KHANDEPARKAR, J)

(SMT.R.S.DALVI, J)